

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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|---------------|---|---------------------------|
| IN RE: |) | CASE NO: 24-10119-smr |
| |) | CHAPTER 11 |
| |) | |
| 1001 WL, LLC, |) | Austin, Texas |
| |) | |
| |) | Thursday, August 22, 2024 |
| Debtor. |) | |
| |) | 4:26 p.m. to 5:18 p.m. |

** PARTIAL TRANSCRIPT **

TESTIMONY OF ERIC RODRIGUEZ

BEFORE THE HONORABLE SHAD ROBINSON,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: See page 2

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Court Reporter [ECRO]: Recorded; Ren Schoener

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Austin, Texas; Thursday, August 22, 2024; 4:26:02 p.m.

(Partial transcript; Testimony of Eric Rodriguez

THE COURT: -- can swear you in.

THE CLERK: Please raise your right hand.

ERIC RODRIGUEZ, ROMSPEN'S WITNESS, SWORN

THE CLERK: Thank you. If you'll have a seat in the witness stand. And watch your step right over here.

THE COURT: All right. Oh, sorry.

DIRECT EXAMINATION

BY MS. NDEGE:

Q Good afternoon, sir -- sorry.

THE COURT: Hold on, hold on, Ms. Ndege.

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Full name is Eric Cain (phonetic) Rodriguez, R-o-d-r-i-g-u-e-z.

THE COURT: All right. Just for purposes of the record, this is a witness being called by Romspen out of order, Mr. Rodriguez.

Therefore, Ms. Ndege, this is your witness. So it will be a direct examination. It's not a cross, just for a reminder. And then, of course, Debtor will have a change to cross. All right. You may proceed.

MS. NDEGE: All right.

//

1 **DIRECT EXAMINATION (RESUMED)**

2 **BY MS. NDEGE:**

3 Q Good afternoon, Mr. Rodriguez.

4 A Good afternoon.

5 Q What is your educational background?

6 A I have a Bachelor of Science in Civil Engineering from
7 New Mexico State University and I have an MBA in Corporate
8 Finance from the University of Texas at Austin.

9 Q And what certifications or professional licenses do you
10 have?

11 A I'm a licensed professional engineer.

12 Q How long have you been a licensed professional engineer?

13 A Since 2004.

14 Q Were you hired to inspect 1001 West Loop South in Houston,
15 Texas to assess it for repair and maintenance fees?

16 A I was, yes.

17 Q All right. I'm going to refer to the subject site of the
18 property. Did you inspect the property?

19 A I did, yes.

20 Q When did you inspect the property?

21 A I believe the date was July 12th.

22 Q And you're aware that there was a hurricane, Hurricane
23 Beryl, that came through days before your inspection, right?

24 A I am aware, yes.

25 Q How did you factor that into your inspection?

1 A The issues I was looking for were issues that I felt would
2 have been present at the property prior to the hurricane
3 occurring.

4 Q Can you describe the property?

5 A It's a Class B office building. It's about eight -- I
6 believe it's eight stories and then an eight-story parking
7 garage structure as well.

8 Q And can you generally describe the area and the parts of
9 the property that you inspected?

10 A So I was given access to the roof. I inspected the roof.
11 I was able to walk the eighth floor of the office building. I
12 walked the first floor of the office building which included
13 some mechanical rooms. I also went inside the mechanical
14 penthouse and then I looked at the entire parking structure.

15 Q I'm going to show you a series of pictures. Do you know
16 who took these pictures?

17 A Those pictures were taken by me.

18 Q All right. Are these pictures true and accurate
19 depictions of the condition of the property on the day that you
20 inspected the property?

21 A They are.

22 Q Are these annotations -- are these your annotations in the
23 pictures?

24 A They are.

25 Q Why did you add these?

1 A It provides some context and then some explanation as to
2 what was being shown in the photographs.

3 MS. NDEGE: Your Honor, I move to admit Exhibit 31
4 into evidence.

5 THE COURT: So all of those pictures are all Exhibit
6 31?

7 MS. NDEGE: Yes, Your Honor.

8 THE COURT: All right. Any objections to Exhibit 31?

9 MR. TAYLOR: No objection, Your Honor.

10 THE COURT: Romspen's Exhibit 31 is admitted.

11 (Romspen's Exhibit Number 31 is received in evidence)

12 BY MS. NDEGE:

13 Q Did you prepare a report regarding the condition of the
14 property after your inspection?

15 A I did.

16 Q Do you have a copy of that report?

17 A I do.

18 Q All right. Does that report include a list of repairs
19 that you believe the property needs?

20 A It does, yes.

21 Q All right. I'd like to walk through this list with you.
22 So the first item is the roof and we're just going to pull up
23 the picture. Can you please describe what you observed on the
24 roof?

25 A Yes. So the roof -- it's a built-up roof. It's -- the

1 primary concern I had here is you see all of the standing
2 water. That's what we call "ponding" where the water holds
3 stare. It's problematic because it damages the roofing
4 material. It creates opportunity for leaks. It adds a
5 significant amount of load to the structure which it's
6 typically not designed for. The roof is supposed to shed and
7 drain water.

8 Q Given those observations, what recommendations do you have
9 regarding the roof?

10 A So based on what I saw and also based on the age of the
11 roof, these types of roof have an average life expectancy of 15
12 to 20 years. From the data I was able to gather, it's my
13 understanding that this roof is probably at least 25 years old.
14 So considering the age of the roof, the fact that it's -- if it
15 is, indeed, that old, it's exceeded its useful life and then
16 it's excessive ponding. My recommendation is that a new roof,
17 just that the roof be replaced entirely.

18 Q Did the hurricane we discussed previously have any impact
19 -- any bearing on what you observed?

20 A No. Really the only thing in this picture that you'll see
21 that's hurricane-related is I point out the cable tray. That's
22 just a track where electrical conduit runs.

23 Q Okay.

24 A And you can see it's lifted and twisted. That, I've got
25 to imagine, is most likely due to the hurricane that occurred

1 before but the ponding, that's going to occur with any kind of
2 rain event, whether it's a hurricane or not.

3 Q And did the hurricane have any bearing on your opinion
4 about the necessary repairs for the roof?

5 A No, it did not.

6 Q Did you calculate an estimate of the repairs that you
7 recommended?

8 A I did.

9 Q Did you record this estimate in a table or a document?

10 A Yes, it's contained in my report.

11 Q All right. Did you include it as Exhibit 4 of your
12 report?

13 A I did, yes.

14 Q Okay. So I'm going to -- I'm showing you on the screen
15 Exhibit 30. Is this a copy of that repair estimate we just
16 discussed?

17 A It is, yes.

18 **MS. NDEGE:** Your Honor, I'm going to move to admit
19 the repair estimate into evidence.

20 **THE COURT:** Any objections to Romspen's Exhibit 30?

21 **MR. TAYLOR:** No objection.

22 **BY MS. NDEGE:**

23 Q Where in the estimate --

24 **THE COURT:** Hold on. Exhibit 30 is admitted.

25 **(Romspen's Exhibit Number 30 is received in evidence)**

1 **MS. NDEGE:** Sorry, Your Honor.

2 **BY MS. NDEGE:**

3 Q Where in the estimate is the roof repair cost?

4 A It's the very first section.

5 Q And what is the number you estimated?

6 A It's \$266,322.94.

7 Q How did you derive that amount?

8 A So we used -- we estimated the amount to -- we estimated
9 to cost to repair using a publication called "RSMeans."

10 Q All right.

11 A It's a publication that publishes national averages for
12 construction costs for commercial buildings. And we used the
13 renovation one. We used the data for Houston in the current
14 quarter. And that's a -- it's a tool that's used in the
15 engineering industry as well as the forensic engineering
16 industry.

17 Q And it's used to do what exactly, if you can elaborate?

18 A It's used to estimate construction costs. So what happens
19 lots of times in my line of work, when I am investigating
20 potential construction costs, it's not always possible to go
21 out and get a quote from a contractor. It's very difficult for
22 me to call a contractor and ask him to expend resources to come
23 out and give me a quote on the project because I have no
24 authority to give him the work. And so he's probably never
25 going to see that work. So he doesn't want to provide that for

1 me for free.

2 The other thing, once they learn it's in litigation,
3 they get nervous and they get spooked. And they apply,
4 typically in my experience, a very large multiplier on top of
5 that to account for any kind of issues for the risk that
6 they're taking on.

7 So what we typically do is we use this publication,
8 RSMeans, and when I'm dealing with the closing experts, that's
9 usually what I see our estimates from RSMeans.

10 Q Is RSMeans widely used?

11 A Yes, absolutely.

12 Q So the next item on your list is a floor drop ceiling and
13 a mechanical penthouse. I'm going to show you two pictures.
14 Could you please describe your observations of the drop ceiling
15 and the mechanical penthouse?

16 A So -- yes. So this photograph right here, I believe, is
17 the photograph of the drop ceiling actually on the eighth floor
18 and then there's other photographs of the drop ceiling in the
19 mechanical penthouse. But as I alluded to earlier --

20 **THE COURT:** Let me interrupt. Let me make sure I'm
21 -- is it mechanical penthouse?

22 **THE WITNESS:** Yes, sir.

23 **THE COURT:** Okay. I just wanted to make sure I'm
24 hearing it correctly. All right. Sorry for the interruption.

25 **THE WITNESS:** So the photograph on the screen right

1 now is from the inside of the mechanical penthouse. It's just
2 a penthouse that's up at the roof level that houses the
3 mechanical equipment.

4 **BY MS. NDEGE:**

5 Q What recommendations did you have regarding the mechanical
6 penthouse and the drop ceiling?

7 A So I felt that the drop ceiling -- the tiles needed to be
8 replaced. Because of the leaks that were happening in the
9 roof, the tiles were becoming water damaged.

10 Q Did you feel that specific -- did you come to the
11 conclusion that specific tiles needed to be replaced or all the
12 tiles needed to be replaced?

13 A So in the mechanical penthouse, the damage to the tiles
14 was much more significant than inside the building. They were
15 all soft and wet to the touch. They were bowed. They were
16 stained. In the -- on the eighth floor of the office building,
17 there are many that are stained and water damaged and wet, not
18 100 percent of them.

19 Q Okay.

20 A But my recommendation was to replace them all because if
21 you replace spot ones, they'll bring them in. They won't match
22 in color and the additional cost to replace the ones that maybe
23 haven't been damaged is minimal at that point if you're already
24 doing a widespread replacement.

25 Q So did the hurricane have any bearing on what you observed

1 when it came to the drop ceiling and the mechanical penthouse?

2 A No, because the staining that I would have seen would have
3 happened before and if anything, it was just able to show me
4 kind of where some of the active leaks were actually.

5 Q And did it have any bearing on the recommendations of
6 necessary repairs that you made?

7 A It did not, no.

8 Q Did you calculate an estimate for the drop ceiling in the
9 mechanical penthouse?

10 A I did.

11 Q What's the number that you estimated?

12 A So, yeah, if you scroll down there, the number for that is
13 \$153,750.

14 Q And how did you derive this amount?

15 A That was the same way. We estimated the cost of work
16 using the RSMeans data.

17 Q The next item on your list was the mechanical ductwork?

18 A Yes.

19 Q Could you please describe your observations of the
20 mechanical ducts?

21 A So the photograph you had earlier of the mechanical
22 penthouse, you can see it with -- yes, that one. So if you
23 notice there that vent, it -- there's a lot of microbial growth
24 inside of the mechanical penthouse. We saw it on the ceiling
25 tiles. We saw it on the walls. We saw it on the floors. And

1 as you can see, a lot of it is being shot out of the vent of
2 the mechanical ductwork.

3 We also saw that on the eighth floor just outside of
4 some vents as well where there's slight staining of some of
5 that microbial growth. We weren't able to test exactly what
6 that was --

7 Q Okay.

8 A -- but because that growth is microscopic, it gets into
9 the vent system. It gets into the duct system and it -- it's
10 likely to just penetrate the entire system.

11 Q Why didn't you test the ducts?

12 A That would -- I would have had to subcontracted that out.
13 That would have been beyond my personal expertise and just --
14 here were time constraints that I wouldn't have been able to do
15 that.

16 Q All right. And what is your recommendation in the interim
17 when it comes to the mechanical ducts, your repair
18 recommendations?

19 A Because of just how difficult it is and because of the
20 extent of the microbial growth that was being shot out,
21 especially at the mechanical penthouse, my recommendation was
22 just to replace the entire vent system.

23 Q Did the hurricane have any bearing on what you observed
24 with the mechanical ducts?

25 A No, that would not have any bearing.

1 Q Did the hurricane have any bearing on your opinion in
2 regards to the necessary repairs for the drop ceiling and the
3 mechanical ducts?

4 A It did not.

5 Q Did you calculate an estimate for the mechanical ducts?

6 A I did.

7 Q What number did you estimate?

8 A That was \$65,616.

9 Q And how did you derive this figure?

10 A That was also derived through RSMeans.

11 Q All right. So the next item on your list are the
12 chillers?

13 A Yes.

14 Q Did you inspect the chillers?

15 A I did not inspect the chillers.

16 Q What repairs are needed for the chillers?

17 A So I was given some documentation, some email
18 correspondence and some quotes of a --

19 Q Okay.

20 A -- manufacturer --

21 Q Okay.

22 A -- that was performing some maintenance on the chillers
23 before I ever was retained on this matter or before I ever got
24 out to the project site. It was just my recommendation that
25 the maintenance that had started just be completed.

1 Q Okay. And based on your review of those estimates, what
2 amount did you include for repairs to the chillers?

3 A That total is \$43,648.

4 Q The next few items in your list involve the parking
5 garage. Is this component of the repairs the one that requires
6 the most expensive repairs?

7 A Yes, it is.

8 Q Your report noted three safety concerns. The first safety
9 concern involved the P1 level of the parking garage. Can you
10 please describe the safety concerns there?

11 A Yeah, at the P1 level, there was a significant settling of
12 the concrete slab, a very major break in the concrete. And so
13 the concrete had settled.

14 Q Okay.

15 A Based on the extent of the settlement, my concern was that
16 if a heavy vehicle came and parked there that I don't -- it
17 wasn't clear exactly how stable that would be. And so further
18 settlement could happen and it could have been fairly deep,
19 almost like a sinkhole, if you will, which my concern it would
20 actually lead to property damage to a vehicle or further damage
21 to the parking structure.

22 Q And what do you believe caused this issue?

23 A Based on everything I've seen -- I haven't seen any
24 drawings. So I can't be with a hundred percent certainty but
25 based on my inspection and based on my experience in designing

1 these types of structures, it's my belief that the slab at the
2 P1 is grade supported which means it's just resting on soil.

3 And so the failure that I saw is indicative of a soil
4 failure where there's no longer support for the concrete slab
5 and so the concrete slab is not capable of carrying its own
6 weight and spanning the void that has occurred beneath it. And
7 so that's caused the break.

8 Q What is needed to fix this problem?

9 A So to fix that problem, my recommendation was to perform a
10 saw cut of the concrete and to remove a section of the fatal
11 concrete.

12 **MR. TAYLOR:** Your Honor, there's one of our witnesses
13 who (indisc.).

14 **THE COURT:** Yeah. Nobody has invoked the Rule. So,
15 yeah.

16 **BY MS. NDEGE:**

17 Q All right. Go ahead.

18 A Yeah. So my recommendation was to remove a certain
19 portion of the failed concrete slab and then also would be to
20 remove and replace the failed soil and replace it with what we
21 call "select fill." And that provides the proper structural
22 support for the slab on grade.

23 Q Did you calculate an estimate?

24 A I did.

25 Q And what number did you estimate for the P1 level of the

1 parking garage?

2 A So the parking structure Level P1, that's the \$225,205.20
3 total.

4 Q And how did you derive that amount?

5 A That was also used -- derived using RSMeans as well.

6 Q And did the hurricane have any bearings on what you
7 observed in the P1 level of the parking garage?

8 A None.

9 Q Did it have any bearing on your opinion in regards to
10 necessary repairs for this portion?

11 A It did not.

12 Q So the second safety concern you cited was the P7 level of
13 the parking garage. Can you please describe the safety
14 concerns there?

15 A So the safety concern that I had at P7, there's a -- along
16 the exterior edge of the parking garage, there's a cable
17 barrier system --

18 Q Okay.

19 A -- and that's what prevents a vehicle from driving over
20 the edge. One of the cables has snapped and it lost tension.
21 And so the full cable barrier system is not present over -- I
22 don't remember specifically -- maybe three or four parking
23 spots it affects. And so my recommendation was just to close
24 off those parking spots until that cable could be repaired.

25 Q And what do you believe caused this cable to snap?

1 A There's many things. Sometimes they just lose the tension
2 or they lose their anchorage.

3 MR. TAYLOR: Objection, calls for speculation. The
4 question was, what do you believe caused this and he -- and
5 he's going into things that could cause it --

6 MS. NDEGE: I'll withdraw the --

7 MR. TAYLOR: -- testimony on what caused it.

8 MS. NDEGE: I'll withdraw the question, Your Honor.

9 THE COURT: Okay.

10 BY MS. NDEGE:

11 Q During your observations, were there any indications
12 regarding what caused the cable to snap?

13 A There weren't because all of the other cables were in
14 place and they seemed perfectly functional and they were
15 tensioned properly. So it's just a case of one cable that just
16 failed.

17 Q All right. And did you calculate an estimate to repair
18 the cable or to repair and replace the cable?

19 A I did.

20 Q What is the number that you estimated?

21 A That one was \$954.

22 Q And how did you derive that amount?

23 A That was also used -- derived using RSMeans as well.

24 Q Did the hurricane have any bearings on what you observed
25 regarding this cable?

1 A It did not.

2 Q Did it have any bearings on your opinion regarding the
3 necessary repairs for the cable?

4 A It did not.

5 Q The final safety concern that you cited that involved
6 water intrusion and potential mold issues, can you please
7 describe the mold and water intrusion issues?

8 A Yes. So, obviously, being there just a few days after the
9 hurricane and with the building's close proximity to the
10 Buffalo Bayou, the office building did receive water into the
11 interior. And when we walked the first floor, again, this was
12 three days after. There was still quite a bit of standing
13 water. The carpets were still saturated with water. There was
14 dirt and debris from the bayou.

15 And my concern was that after three days being in the
16 first floor, there was no conditioned air moving through the
17 space. I didn't observe one single fan that was trying to dry
18 out the area. I didn't see anybody actively mopping or
19 sweeping or trying to clean it up. So my concern at that point
20 was just that if it's left untreated for a significant amount
21 of time, that could create another mold -- it could create mold
22 issues in the first floor.

23 Q Okay. So the hurricane had bearing on this part of your
24 observation?

25 A Yes. That was totally due to the hurricane.

1 Q And did you recommend any repairs for this mold and water
2 intrusion issue?

3 A I did not. I just made note that it's a potential source
4 for additional problems down the road if not effectively
5 treated in a timely manner.

6 Q Thank you. The next item on your estimate was the sealed
7 bar joists. Can you please describe your observations of the
8 steel bar joists?

9 A Yes. So in that photograph that just (indisc.), you can
10 see there up on the ceiling of the parking structure. The
11 concrete deck is supported by these steel bar joists. And the
12 bar joists are those open-web beams, if you will, where there's
13 a -- there's two angles on the top cord and two angles on the
14 bottom cord and then you've got those triangular bars in the
15 middle.

16 So those carry the parking garage, the parking deck.
17 Obviously, those are exposed to the elements. They're exposed
18 to air. They're exposed to weather. So they have to be
19 painted to protect them from corrosion.

20 Q Okay.

21 A And what I noticed is that the bar joists are starting to
22 -- the paint on them is starting to crack and the reason for
23 that is because the bar joists are relatively light and that's
24 what makes them attractive to use is because they're light and
25 inexpensive. But because they're so light, they deflect a lot.

1 And when they deflect under the load of the car, the paint is
2 not able to deflect with them and so the paint begins to crack
3 and it starts to fall away.

4 And when the paint is removed from the bar joists,
5 now that bare steel is left exposed to the elements. It can
6 rust. And it's just a snowball effect at that point where the
7 rust starts to break away the steel -- or take away the paint.
8 I'm sorry. And once that begins to rust, you start to lose
9 cross section and corrosion of the steel.

10 Q Was this consistent with every floor of the parking
11 garage?

12 A Yes. The loss of paint and the cracking of the paint was
13 consistent across all -- all the bar joists.

14 Q Given that, do you recommend that certain bar joists are
15 replaced or all bar joists? What's your recommendation
16 regarding that?

17 A So my recommendation was not to replace the bar joists.
18 There are some bar joists where there's some significant
19 corrosion that's occurring at the seat. And my concern that if
20 the paint is not restored that the corrosion will just get
21 worse and then that could result in the structural integrity of
22 the bar joists. So my recommendation is to restore the paint
23 finish to the bar joists so that they are protected from
24 further corrosion.

25 Q Did you calculate an estimate for restoring the paint?

1 A I did.

2 Q And what's the number that you estimated?

3 A So that was the most costly item of the entire repair
4 estimate and that one line item is -- was estimated at 2.8
5 million.

6 Q And how did -- sorry. How did you derive that amount?

7 A That was also derived using RSMeans.

8 Q And did the hurricane have any bearing on what you
9 observed with the steel bar joists?

10 A It did not.

11 Q Did it have any bearing on your opinion in regards to the
12 necessary repairs of the bar joists?

13 A It did not.

14 Q The next item on your list was the ramp between the P1
15 parking level and the P2 parking level. Would you please your
16 describe your observations of this ramp?

17 A Yes. So at the ramp -- so when enter the parking garage,
18 it's my understanding you enter at Parking 2 from the street
19 level and then there's a ramp that takes you down to the P1
20 level. Again, from what I could tell based on my observations
21 without having the benefit of the drawings to understand
22 exactly how it was constructed, the portion of the ramp that I
23 observed appeared to be supported on grade just as the issue
24 that we talked about earlier at P1. And that has also settled
25 as well --

1 Q Okay.

2 A -- not to the extent that it has settled at P1 but,
3 nonetheless, it has settled and there's a significant
4 depression that's observable.

5 Q Did you -- what's your recommendation for repairing?

6 A My recommendation would be to do the same thing, would be
7 to remove that concrete and remove the soils and replace them
8 with suitable soil so that the -- it doesn't worsen.

9 Q Did you calculate an amount for these repairs?

10 A I did.

11 Q And what was the number you estimated?

12 A That repair was estimated at \$17,525.

13 Q How did you derive that amount?

14 A We used RSMeans to do that.

15 Q And did the hurricane have any bearings on what you
16 observed on this ramp?

17 A It did not.

18 Q Did it have any bearings on your opinion in regards to the
19 repair?

20 A It did not.

21 Q All right. So the next item was the P2 level and the P4
22 level of the parking garage. Can you please describe your
23 observations of the P2 and P4 parking level?

24 A Yes. So in discrete areas that we noticed on the P2 level
25 and the P4 level, we noticed discrete areas of spalling. And

1 what "spalling" is, it's breaking away of the concrete. Now,
2 concrete is reinforced with steel reinforcement and when you
3 have spalling in concrete, the concern is that moisture can now
4 get inside the concrete and so there you can see the breaking
5 of the concrete and you can see the structural -- the steel
6 reinforcement is exposed.

7 Similar to the bar joists, now that steel
8 reinforcement that's usually encased within the concrete is now
9 exposed to the elements. It can take on moisture and it can
10 rust and when steel reinforcement rusts, it breaks the bond
11 between itself and the concrete and when that bond is broken,
12 the concrete starts to fail even further and it starts to
13 crumble away.

14 And so my concern is that this type of instance where
15 the reinforcement is exposed, if it's not addressed and patched
16 up, you'll have another instance where you could have a hole in
17 the parking slab form as there has already been on previously.

18 Q So is there a recommendation for repair patching up the
19 hole?

20 A So my recommendation would be to just remove a very small
21 discrete area where the spalling has occurred and then patch
22 that up.

23 Q And what -- how -- did you calculate an estimate for that
24 repair?

25 A I did.

1 Q And what number did you estimate for that?

2 A So we came up with two numbers for that, I believe. So
3 the number at the P2 elevated slab at three discrete areas, we
4 estimated that repair at \$25,720. And then on the P4 level,
5 also three discrete areas which were slightly larger, that came
6 out to \$87,004.

7 Q Did you use RSMeans to derive these figures?

8 A We did use RSMeans, yes.

9 Q And did the hurricane have any bearing on what you
10 observed for the P2 level and P4 level of the parking garage?

11 A It did not.

12 Q Did it have any bearings on your opinion regarding the
13 repairs of these two -- this item?

14 A It did not.

15 Q Now, the final were the wheel stops. Could you please
16 describe your observations of the wheel stop?

17 A The wheel stops just were -- some of them were starting to
18 crack. Some of them were starting to break. There were a few
19 that were missing. You could tell some of them had been
20 dislodged and had moved. And so they just needed to be
21 restored.

22 Q Restored. And did you calculate an estimate for restoring
23 them?

24 A Yes.

25 Q What is the number that you estimated?

1 A The wheel stops came to \$11,037.

2 Q And did you use RSMeans to derive that amount?

3 A We did, yes.

4 Q And did the hurricane have any bearing on what you
5 observed with the wheel stops?

6 A It did not.

7 Q Did it have any bearing in regards to the repairs that you
8 thought were necessary for the wheel stops?

9 A It did not.

10 Q Did you calculate a total amount for all of the repairs
11 that you recommended?

12 A Yes. The total came out to -- after -- so the numbers
13 that we just talked about where I gave you the specific repair
14 costs, those are what we would call "hard costs" --

15 Q Okay.

16 A -- the cost to do the specific work tasks. And then we
17 added in what we call "soft costs" and what we then added there
18 is a 15-percent multiplier for general conditions.

19 So if you undertake this entire project, the approach
20 would most likely be to hire a general contractor that would
21 sub-out the specific trades that need to do each work. So the
22 company that does the repair to the concrete slab is not going
23 to do the repair to the roof, is not going to do the repair to
24 the cable barrier system.

25 So you'll have a general contractor and they'll have

1 general conditions to manage and supervise the project and a
2 typical amount, that is 15,000 -- 15 percent of the hard costs.
3 And so then from there, we added a contingency to account for
4 any kind of unknowns that might be encountered during the
5 execution of the project. And that contingency was 20 percent.

6 Q Did you account for insurance or did you include
7 insurance?

8 A We included a 1.2 -- 1.25 -- excuse me one and a quarter
9 percent multiplier for insurance. That's just the typical
10 insurance that you would need to have on a construction
11 project. We also added in a 10 percent multiplier for the
12 contractor's fee or his profit, and then an eight percent
13 multiplier for professional fees. Again, for a project like
14 this, you'll need to get signed and sealed engineering
15 drawings, possibly architectural drawings and so you'll need to
16 hire a licensed designer and their fees would be approximately
17 eight percent of what the hard costs are.

18 Q And I don't know if we discussed this but did you include
19 an amount for general concrete work?

20 A Yes. So obviously with all the concrete work, with the
21 demolition of the concrete that I'm recommending, there'll be
22 things like cleanup and disposal and so we included a line item
23 for that as well.

24 Q So I'm going to pull up an invoice for garage repairs by
25 Olshan. It's debtor's Exhibit 32.

1 Are you familiar with this invoice?

2 A I am.

3 Q Does it address any of your concerns regarding the
4 condition of the parking garage?

5 A So from what I could tell this invoice is in response to
6 the issue that I identified at the P1 level where the concrete
7 slab has settled.

8 Q Okay. So does it address what you recommended as a
9 repair?

10 A It's an option but in my opinion it's not necessarily a
11 permanent option because what happens here is the methodology
12 is they inject a material into the ground and what it does is
13 it fills up the void and then it also, once the void is filled,
14 they continue to fill it and under pressure it lifts the slab.

15 Now, what happens when you lift the slab, as you can
16 tell, in this paragraph, there's still a significant break in
17 that slab and so you still need to reestablish the continuity
18 of the concrete there because at that point with still a break,
19 you still have a way for moisture to get through that slab and
20 get down into the underlying silos as well which can still
21 continue to just deteriorate and wash away.

22 And so because of the fact that this is outdoors,
23 because it's of its proximity to the Buffalo Bayou with just a
24 few feet above the typical water level, I don't really consider
25 this a permanent option.

1 Q Given all those factors as a construction engineer, would
2 you recommend this repair?

3 A Not -- not to reestablish the -- you know, a permanent fix
4 for the slab.

5 MS. NDEGE: Thank you. I'll pass the witness, Your
6 Honor.

7 CROSS EXAMINATION

8 BY MR. TAYLOR:

9 Q Good afternoon, Mr. Rodriguez.

10 A Hello, Mr. Taylor.

11 MR. TAYLOR: Your Honor, first of all, I want to move
12 for admission of the exhibit that they just referenced that he
13 just testified to, Debtor's Exhibit 32.

14 THE COURT: All right. Any objection to Debtor's
15 Exhibit 32?

16 MS. NDEGE: No objection, Your Honor.

17 THE COURT: All right. Debtor's Exhibit 32 is
18 admitted.

19 (Debtor's Exhibit Number 32 received in evidence)

20 BY MR. TAYLOR:

21 Q Mr. Rodriguez, we'll start with there. You're familiar
22 with Olshan Foundation Repair, aren't you?

23 A I am, yes.

24 Q And they're a qualified concrete repair service in Houston
25 and elsewhere?

1 A Yes.

2 Q What you I think told the court, if I synthesize it, is
3 they recommended using this to repair the P1 problems. You
4 disagree and prefer your method better; is that right?

5 A Yes.

6 Q When you tallied up the total cost of repair, it was about
7 5.9 million dollars but if you take out the GNA and the
8 insurance and everything else that you said a general
9 contractor would charge, the total cost of repairs was about
10 3.7 million, correct?

11 A That's correct.

12 Q About 2.2 million dollars in the what I'll call "overhead
13 costs" that you've attributed for work by a general contractor
14 on the project, correct?

15 A Yes.

16 Q There's no reason that an owner of a building couldn't do
17 the contracting themselves, is there, and go and hire
18 contractors to do individual projects, right?

19 A Sure. The owner could self-contract, could self-manage
20 it.

21 Q And they would save the 2.2 million dollars, right?

22 A It would save -- yeah, with the exception there's a
23 contingency line item in there and I would always recommend
24 that that contingency fund be in there just to fund any kind of
25 surprises that might occur.

1 Q But you don't know whether a surprise would occur or not,
2 do you?

3 A No.

4 Q That's why it's called a "contingency," right?

5 A Absolutely.

6 Q Now your work, the company you work for now, Secretariat
7 (phonetic), how long have you worked there? Remind me.

8 A I began there in January of this year.

9 Q And 100 percent of your practice is expert witness work
10 with them, correct?

11 A Well the -- 100 percent of our practice of my practice is
12 advising on projects that are involved in some kind of
13 litigation or arbitration. I don't always testify as an expert
14 witness on all the projects I work on.

15 Q Fair enough. Expert analysis and witness work relating to
16 litigation.

17 A Yeah. Forensic engineering as well, we refer to it as.

18 Q And at your prior employer, about 75 percent of your
19 practice was that same type of work, correct?

20 A That's probably right, yes.

21 Q And in your career you've only done engineering analysis
22 on three commercial high-rise buildings, correct?

23 A As a design engineer, yes.

24 Q And one of those was in Houston, right?

25 A Yes.

1 Q Now you said you did the inspection on 7/12. I looked
2 back at your report it was actually on 7/11, wasn't it? July
3 11th?

4 A I might have misspoke. I apologize for that.

5 Q So that would have been three days after Hurricane Beryl
6 hit?

7 A Yeah. It was definitely three days after Hurricane Beryl
8 hit. I remember that. The specific day I probably misspoke.

9 Q I know you repeatedly said -- and I'll give you the wheel
10 stops and the cable break -- but I notice that you said that
11 the hurricane had no bearing on every one of your analyses you
12 did on the repairs, correct?

13 A That's correct.

14 Q You didn't see the property before the hurricane, did you?

15 A No. I was scheduled to go see the property before the
16 hurricane but it was not able to happen so the only time I saw
17 it was -- was on that day.

18 Q So you did not see the property before the hurricane hit,
19 did you?

20 A No, I did not.

21 Q So you don't know what the conditions looked like before
22 the hurricane was there, do you?

23 A No, because I hadn't observed it.

24 Q In your inspection, you actually only looked at two -- you
25 went to the roof, right?

1 A I went to the roof, correct.

2 Q And you went through the parking garage, correct?

3 A I did.

4 Q And then you looked at two floors inside the eight floor
5 building, didn't you?

6 A That's correct. Actually three, I'm sorry, I looked at.

7 Q Well, including some of the first floor, right?

8 A The first floor, the eighth floor, and then actually we
9 did go -- we did go onto the sixth floor to observe there was a
10 glass curtain wall in the southeast corner of the building that
11 I think had sustained hurricane damage and it had blown out.

12 And so the gentleman who was escorting around -- escorting us
13 around showed us that so we did see the sixth floor as well.

14 Q I want to talk about some of the problems that you've
15 mentioned of what you believe were issues and let's talk first
16 of all about the joists. That was the largest single item on
17 the repair, wasn't it?

18 A It was.

19 Q That was a number -- I want to make sure I get the number
20 right. 2.8 million or the three point -- 2.8 million or the
21 3.9 million -- or 3.7 million, correct?

22 A Correct.

23 Q Now you didn't actually measure the joist in the parking
24 garage, did you?

25 A We did. We measured the -- I mean we took -- we took a

1 measurement of how long the joists were and then we just --

2 Q Extrapolated that?

3 A -- extrapolated it out to get a total quantity.

4 Q And there were no signs that the steel was failing,
5 correct?

6 A No sign that the steel was failing, no. There were signs
7 of corrosion but no impending failure in my opinion.

8 Q And you can't say when the steel would fail, if ever, can
9 you? Couldn't give a date.

10 A I mean I can't tell you that it'll fail on May 5th of 2027
11 but if it's left untreated it's my opinion that a failure will
12 eventually happen.

13 Q But you can't say when.

14 A I can't say when, no.

15 Q And you didn't go actually get -- I think you testified --
16 a quote from any contractor for that work, did you?

17 A We did not.

18 Q In fact, you didn't get a bid from a contractor for any of
19 this work, did you?

20 A With the exception of the chiller work which had already
21 been -- which had already been prepared.

22 Q And that was \$43,648, correct?

23 A Yes, sir.

24 Q So the 3.7 million dollars before you get the other costs,
25 the only one that you actually have a bid on is for \$43,648,

1 correct?

2 A That's correct.

3 Q The garage itself is safe, isn't it?

4 A Yeah, I believe it's safe other than -- again, other than
5 the two issues I raised that I thought should be addressed.

6 Q So the wheel -- wheel stops, correct?

7 A Yes, the wheel stops --

8 Q That's one of them?

9 A -- yes.

10 Q And the costs for to fix the wheel stops --

11 A Well the wheel stop wasn't what I was considering as a
12 safety issue. It was the cable barrier.

13 Q Well you said there were two and so I thought maybe that
14 was one of the other ones.

15 Cable barrier is on P7 and that's \$954 to repair?

16 A That's correct, yes.

17 Q And what was the other safety?

18 A Well the other one I was concerned about was the settled
19 slab on P1. Again, if a car, a heavy pickup truck were to park
20 there I'd be concerned that there's a possibility of that.

21 Q Did you do any load testing on it?

22 A I did not do any load testing.

23 Q You do any failure analysis on it?

24 A Did not do any calculations. I wouldn't have the
25 information to do that.

1 Q And you can't say that the garage was not properly
2 constructed, can you?

3 A No. I didn't see any signs of improper construction.

4 Q Aren't -- I know you said you hadn't been there prior to
5 Hurricane Beryl, so you don't know if that structure at P1 had
6 ever flooded before, do you?

7 A If the structure at P1 had flooded?

8 Q Yes.

9 A I mean other than Hurricane Harvey, I'm not aware of any
10 other flooding. I couldn't tell you whether or not with any
11 specificity that it has.

12 Q Well you didn't go inspect this property in connection
13 with Hurricane Harvey, did you?

14 A I did not, no.

15 Q You also testified that area appeared to be grade
16 supported. You don't know whether this garage is grade
17 supported or not, do you?

18 A No, I haven't reviewed any drawings. Again I'm just
19 basing that on my experience of how it presents.

20 Q Now you said you observed the ponding on the roof and we
21 saw the pictures of that. Again, you didn't observe that
22 before the hurricane, did you?

23 A I did not.

24 Q So you don't know how much of that ponding was due to the
25 hurricane, do you?

1 A I couldn't imagine that any of it was due to the
2 hurricane.

3 Q You don't know what was done as a result of the hurricane
4 and what wasn't, do you?

5 A Well I may mis -- not understand your question but my --
6 to answer it to the best I can is that the ponding is something
7 that occurs slowly over time.

8 Q Had you ever observed ponding up there before you went up
9 on the 11th?

10 A I have never been up there before that day.

11 Q So you don't know how much ponding occurs up there on a
12 normal rain storm, do you?

13 A I do not know that, no.

14 Q You also don't know if the roof is being replaced by
15 insurance, do you?

16 A I do not know that, no.

17 Q In fact, you did not do any assessment of whether any of
18 these conditions would be covered by insurance, did you?

19 A No, I did not.

20 Q I know there was some discussion in your deposition about
21 what a roof square is. Did you ever go back and look up what a
22 roof score is after your deposition?

23 A I did, yeah.

24 Q And you understand that a roof square is different than a
25 square foot measurement for the roof, isn't it?

1 A A roof square is a hundred square feet, yes, and it's a
2 terminology that is used in the industry. And again, you can
3 price a roof based on roof squares or you can price it on
4 square foot. And my experience throughout my career has always
5 been pricing it on a square-foot basis.

6 Q But in fact, isn't it common in the industry to use roof
7 squares as the basis for us doing a roof repair cost; isn't
8 that right?

9 A I don't know if I would agree with that. I mean my
10 experience with roof squares is that it's on how they order
11 things like shingles. I have advised several clients at our
12 roofing manufacturers and I'm currently working with two right
13 now and we always talk in terms of square footage.

14 Q Now you talked about the HVAC or ducts. Let's talk about
15 the ducts, the mechanical ducts.

16 Again, you only looked at the ducts on two floors;
17 isn't that right?

18 A Well yeah on eight, six and two. We did look at six while
19 we were there but we didn't observe any -- any of the issue
20 that we saw on eight.

21 Q And you didn't do any inspection onsite any of the ducts,
22 did you?

23 A Did not, no.

24 Q Didn't run a camera up through there to take a look, did
25 you?

1 A No, I did not.

2 Q And you didn't do any testing of any of the microbial
3 growth that you saw, did you?

4 A No. I wouldn't be qualified to do that kind of testing.

5 Q Well you could have had somebody do it, right?

6 A We could have somebody do it. And like I said earlier, I
7 would have liked to have done it. There just were time
8 constraints that did not allow for that.

9 Q So you didn't take -- you don't know anything about the
10 condition of the inside of the ducts, do you?

11 A No.

12 Q And you didn't do any mold testing, correct?

13 A That's correct.

14 Q The water issues, you talked about the dropped ceiling
15 issues on the eight floor in the mechanical penthouse. Do you
16 recall that?

17 A Yes, sir.

18 Q And the eighth floor is the top level of the building,
19 correct?

20 A Yes.

21 Q And the mechanical penthouse would be on top of the
22 building?

23 A Yeah, I believe you access it through the top of the
24 through like through the roof. It's up there.

25 Q So the eighth floor and the mechanical penthouse would

1 have been the two areas that would have been closest to where
2 the rain was coming in from a hurricane, for lack of a better
3 term, correct?

4 A Yeah. That's why those are the areas that are that
5 exhibit water damage.

6 Q And so you don't know what they would look like or the
7 condition of those were before the hurricane, do you?

8 A I do not.

9 Q Going back briefly to this issue of the Olshan, you
10 actually are familiar with the product they use, aren't you?

11 A I am, yes, sir.

12 Q And you've actually gotten quotes from them and specked
13 out that type of work before, haven't you?

14 A I had a project one time where we it was our
15 recommendation to use that, that methodology to restore some
16 concrete.

17 Q And they are a respected contractor, aren't they?

18 A I have no reason to believe otherwise.

19 Q Well actually in your testimony you said they are a
20 respected contractor. Do you change your testimony today?

21 A No, I do not, no.

22 Q And you believe they do quality work, right?

23 A I've never seen their work but again I've never heard of
24 anything that their work is bad.

25 **MR. TAYLOR:** Thank you. Pass the witness, your

1 Honor.

2 **THE COURT:** Redirect?

3 **REDIRECT EXAMINATION**

4 **BY MS. NDEGE:**

5 Q Mr. Rodriguez, can you please explain why you prefer your
6 method over Olshan again?

7 A Yeah. Again my -- the reason that I selected the method
8 that I did is because I think that provides a more permanent
9 solution and something that's not going to be subjected to
10 further washing away in the future.

11 Q And if you didn't see the property before the hurricane,
12 how can you say that has no bearing on the repairs that you
13 recommended and the condition of the property?

14 A Because the conditions that I saw that I have opined on
15 are issues that as an engineer who's been practicing for nearly
16 25 years and have done forensic investigations on these type of
17 projects, the issues that I've seen are not issues that happen
18 in the span of 72 hours because of a hurricane. They're issues
19 that happen over prolonged periods of time due to the property
20 not being properly maintained.

21 Q And did your report include a maintenance program for the
22 property?

23 A It did. I attached a -- to my report I --

24 **MR. TAYLOR:** Objection. Your Honor, the report is
25 not in evidence. (inaudible) talk about (inaudible) not talk

1 about his maintenance of (inaudible) for the property. That
2 report is not in evidence.

3 **MS. NDEGE:** I'll withdraw the question, Your Honor.

4 **THE COURT:** Okay. She's withdrawn the question.

5 **BY MS. NDEGE:**

6 Q Do you have any recommendation regarding maintenance for
7 the property?

8 A I absolutely do, yes. Because the parking structure --
9 and that's where --

10 **MR. TAYLOR:** I'm going to object, Your Honor. This
11 goes beyond the scope as well. I didn't ask anything about a
12 maintenance program for the property. She (inaudible) have
13 done this on Direct.

14 **THE COURT:** How does it relate to the scope of Cross,
15 Ms. Ndege?

16 **MS. NDEGE:** It relates to the scope because I think
17 there's an argument that these repairs are based on the
18 hurricane, rather, or that there's -- there are questions
19 regarding hurricane damage as opposed to a lack of maintenance.

20 **THE COURT:** Right. And you addressed it on your
21 Direct and Mr. Taylor had an opportunity to ask about it on
22 Cross. He didn't open the door to any new issues. I think you
23 had your chance. We're not going to rehash that.

24 **MS. NDEGE:** Thank you, Your Honor.

25 **THE COURT:** The objection is sustained.

1 **BY MS. NDEGE:**

2 Q And is the Olshan estimates, were they only proposed for a
3 certain part of the parking garage?

4 A Yeah. My understanding it's just on the P1 level, yes.

5 **MS. NDEGE:** All right. Thank you. I pass the
6 witness.

7 **MR. TAYLOR:** (inaudible).

8 **THE COURT:** Limited to the scope of the Redirect?

9 **MR. TAYLOR:** It is.

10 **RECROSS EXAMINATION**

11 **BY MR. TAYLOR:**

12 Q Mr. Rodriguez, you said that you preferred your method
13 over Oshan's because it guarded against further washing away.
14 Again, you don't know how often this parking garage has flooded
15 in the past, do you?

16 A I'm sorry, I didn't hear that last part.

17 Q You don't know how often this parking garage has flooded
18 in the past, do you?

19 A I can't tell you how many times it's flooded over its
20 life.

21 Q And do you consider the report you did in this a forensic
22 investigation?

23 A I do.

24 Q Like that's what you called it in the Redirect that you
25 had with Ms. Ndege, didn't you?

1 A I said the word "forensic". I can't remember exactly how
2 I used it. Sorry. Bad short-term memory.

3 Q But in this case, again, you didn't go in and take a look
4 inside ducts, correct?

5 A I did not.

6 Q You didn't perform failure analysis, did you?

7 A Again, I did not.

8 **MR. TAYLOR:** Thank you. Pass the witness.

9 **MS. NDEGE:** Objection, Your Honor.

10 **THE COURT:** Overruled. We're good? Anymore?

11 **MS. NDEGE:** No further questions, Your Honor.

12 **THE COURT:** All right. Witness can be excused.

13 **(Requested transcription concluded at 5:18 p.m.;**
14 **proceeding continued)**

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CERTIFICATION

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter.



August 23, 2024

Signed

Dated

TONI HUDSON, TRANSCRIBER